

UNITED STATES DISTRICT COURT

## DISTRICT OF NEVADA

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WILLIAM BREAZEALE,

Case No. 2:17-cv-02594-RFB-CWH

## ORDER

V.

## Plaintiff's Motion for Temporary Restraining Order

**SOUTHWEST AIRLINE PILOT'S  
ASSOCIATION; DOES 1-20; ROE CORPS. 1-  
20,**

Defendant.

Before the Court is Plaintiff William Breazeale (“Plaintiff”)’s Motion for Temporary Restraining Order (“TRO”), (ECF No. 10) and Motion for Preliminary Injunction (ECF No. 12). For the reasons stated below, the Court DENIES Plaintiff’s Motions.

## I. BACKGROUND

Plaintiff filed his original Complaint on October 5, 2017. (ECF No. 1). Plaintiff also filed a Motion for TRO on October 5, 2017. (ECF No. 4). The Court entered an Order denying the TRO for failure to exhaust the remedies set forth in 29 U.S.C. § 482. (ECF No. 7). Plaintiff filed an Amended Complaint on October 12, 2017, against Defendant Southwest Airline Pilot's Association ("SWAPA"), and now alleges violations of the Labor Management Reporting and Disclosure Act ("LMRDA"), 29 U.S.C. § 411. (ECF No. 9). Plaintiff asserts a breach of contract cause of action, and a breach of implied covenant of good faith and fair dealing cause of action, alleging that SWAPA has violated SWAPA governance procedures in the current election for Las

1 Vegas Domicile Representative. Plaintiff also filed the instant Motion for TRO on October 12,  
2 2017, (ECF No. 10) and a Motion for Preliminary Injunction (ECF No. 12). Plaintiff asks the Court  
3 to enjoin and restrain SWAPA from allowing SWAPA Las Vegas Domicile Representative  
4 Candidate Matt Kenworthy (“Kenworthy”) from appearing on the ballot for the recent SWAPA  
5 Las Vegas Domicile Representative Election, which opened on October 6, 2017. Plaintiff claims  
6 that Kenworthy appears on the ballot in violation of SWAPA’s governing documents.

7 Plaintiff was nominated to be a candidate for the Domicile Representative seat for the  
8 SWAPA Las Vegas domicile, which he accepted. (ECF No. 10 at 5). He alleges that he was  
9 informed that someone filed to contest the Domicile Representative position one day before  
10 nominations closed. (ECF No. 10 at 5). Plaintiff claims that Kenworthy was nominated as a  
11 candidate, even though he was not assigned to the SWAPA Las Vegas domicile, was not present  
12 in the state of Nevada with intent to remain, and was not a resident of Nevada at the time of the  
13 nomination. (ECF No. 10 at 6). Believing that Kenworthy’s nomination was improper, Plaintiff  
14 lodged a formal complaint with SWAPA’s 2nd Vice President, Tom Gasparolo (“Gasparolo”) via  
15 email on September 25, 2017. (ECF No. 10-3). In his response on September 29, 2017, Gasparolo  
16 purportedly upheld Kenworthy’s nomination and found it to be in accordance with SWAPA’s  
17 governing documents. (ECF No. 10-4). On October 3, 2017, Plaintiff contacted a Department of  
18 Labor (“DOL”) investigator to lodge a complaint about Kenworthy’s nomination, and the  
19 investigator scheduled a meeting with Plaintiff and counsel later that week. (ECF No. 10-7). The  
20 DOL investigator subsequently cancelled the meeting and informed Plaintiff that the investigation  
21 would be put on hold until the election was completed. (ECF No. 10-8). The investigator  
22 acknowledged that Plaintiff’s October 3, 2017 email would suffice as a formal complaint. (ECF  
23 No. 10-8).

24

25 **II. LEGAL STANDARD**

26 Under the Labor Management Reporting and Disclosure Act, only the Secretary of Labor  
27 may bring a cause of action in federal court for violations of Title IV of LMRDA. 29 U.S.C. § 482  
28 (laying out procedures for enforcement). Prior to the Secretary of Labor filing suit, a plaintiff must

1 first lodge a complaint internally and exhaust all internal administrative remedies available  
2 pursuant to the constitution and bylaws of plaintiff's union. Id. Plaintiff may then file a complaint  
3 with the Secretary of Labor, who conducts an investigation and has the authority to bring suit. See  
4 Local No. 82, Furniture & Piano Moving v. Crowley, 467 U.S. 526, 539-540 (1984).

5 A preliminary injunction is "an extraordinary remedy that may only be awarded upon a  
6 clear showing that the plaintiff is entitled to such relief." Winter v. Natural Res. Def. Council, Inc.,  
7 555 U.S. 7, 22 (2008). To obtain a preliminary injunction, a plaintiff must establish four elements:  
8 "(1) a likelihood of success on the merits, (2) that the plaintiff will likely suffer irreparable harm  
9 in the absence of preliminary relief, (3) that the balance of equities tip in its favor, and (4) that the  
10 public interest favors an injunction." Wells Fargo & Co. v. ABD Ins. & Fin. Servs., Inc., 758 F.3d  
11 1069, 1071 (9th Cir. 2014), as amended (Mar. 11, 2014) (citing Winter, 555 U.S. 7, 20 (2008)). A  
12 preliminary injunction may issue under the "serious questions" test. Alliance for the Wild Rockies  
13 v. Cottrell, 632 F.3d 1127, 1134 (9th Cir. 2011) (affirming the continued viability of this doctrine  
14 post-Winter). According to this test, a plaintiff can obtain a preliminary injunction by  
15 demonstrating "that serious questions going to the merits were raised and the balance of hardships  
16 tips sharply in the plaintiff's favor," in addition to the other Winter elements. Id. at 1134-35  
17 (citation omitted).

### 19           **III. DISCUSSION**

20 The Court finds that Plaintiff has followed the proper procedures with respect to filing a  
21 complaint within his union, and lodging a complaint with the Department of Labor. However, the  
22 Court finds that Plaintiff's substituted causes of action do not permit him to bring suit. Recognizing  
23 the apparent overlap between Title I and Title IV of LMRDA, the Supreme Court clarified the  
24 distinction between the two statutory subsections in Local No. 82, Furniture & Piano Moving v.  
25 Crowley, 467 U.S. 526, 539-540 (1984). The Court stated: "[T]he primary objectives that  
26 controlled congressional enactment of the LMRDA provide important guidance for our  
27 consideration of the availability of Title I remedies during a union election. In particular,  
28 throughout the congressional discussions preceding enactment of both Title I and Title IV,

1 Congress clearly indicated its intent to consolidate challenges to union elections with the Secretary  
2 of Labor, and to have the Secretary supervise any new elections necessitated by violations of the  
3 Act.” Crowley, 467 U.S. at 543. Discussing the private right of action for individual union  
4 members pursuant to Title I of the statute, the Court continued: “Individual union members may  
5 properly allege violations of Title I that are easily remediable under that Title without substantially  
6 delaying or invalidating an ongoing election.” Id. at 546. The Court emphasized the importance of  
7 minimizing judicial interference with union elections and relying on the expertise of the Secretary  
8 of Labor to the greatest extent possible. Id. at 546-551. Crowley concluded that the “District Court  
9 overstepped the bounds of ‘appropriate’ relief under Title I of the LMRDA when it enjoined an  
10 ongoing union election and ordered that a new election be held pursuant to court-ordered  
11 procedures.” Id. at 551.

12 In light of Crowley and its own review of Title I of LMRDA, the Court finds that Plaintiff  
13 does not allege any of the particular circumstances warranting relief under 29 U.S.C. § 411(a). He  
14 does not argue that he was prevented from nominating candidates, voting in elections or  
15 referendums, or attending membership meetings. Plaintiff does not contend that he was precluded  
16 from participating in the deliberations and votes upon the business of union meetings. While the  
17 Court recognizes the protective nature of Title I in preventing discrimination between union  
18 members, the Court does not find that such discrimination exists here in terms of the allegations.  
19 Challenges to union elections and related procedures generally fall within the ambit of Title IV,  
20 and can only be brought by the Secretary of Labor. Consequently, the Court finds that the Plaintiff  
21 cannot prove a likelihood of success on the merits or a serious question as to the merits of his  
22 argument on this issue.

23 Additionally, the Court finds that Plaintiff has not established irreparable harm. The  
24 LMRDA permits a Court (or the Secretary) invalidate a union election after it has occurred in  
25 certain circumstances. See 29 U.S.C. § 482; see also Crowley, 467 U.S. at 540-41 (citation  
26 omitted). There is therefore no need for the Court to impose injunctive relief at this time.

27 Given the Court’s findings, the remaining factors for consideration as to imposition of a  
28 TRO or injunction need not be addressed at this time.

1           Therefore, the Court denies the Motion for TRO and Motion for Preliminary Injunction  
2 with prejudice. Plaintiff shall not file any further injunctive motions on this issue unless given  
3 leave from the Court. The Court also finds no reason to grant a hearing at this time.

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5           **IV. CONCLUSION**

6           IT IS THEREFORE ORDERED that the Motion for Temporary Restraining Order (ECF  
7 No. 10) is DENIED with prejudice. IT IS FURTHER ORDERED that the Motion for Preliminary  
8 Injunction (ECF No. 12) is DENIED with prejudice.

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10           DATED this 23rd day of October, 2017.

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RICHARD F. BOULWARE, II  
UNITED STATES DISTRICT JUDGE